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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

VS.

MICHAEL ROSFELD

CRIMINAL DIVISION

CP-02-CR-8933-2018

MOTION IN LIMINE

Judge Alexander P. Bicket

Filed on Behalf of the
Commonwealth of Pennsylvania

Counsel of Record for the
Commonwealth of Pennsylvania

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY

By

Daniel E. Fitzsimmons
Chief Trial Deputy
Pa. I.D. No. 36474

Jonathan P. Fodi
Assistant District Attorney
Pa. I.D. No. 209271

Office of the District Attorney
of Allegheny County
401 Courthouse
Pittsburgh, Pennsylvania 15219

(412) 350-4407

MOTION IN LIMINE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW, comes the Commonwealth of Pennsylvania by its attorneys, STEPHEN A. ZAPPALA, JR., District Attorney of Allegheny County, DANIEL E. FITZSIMMONS, Chief Trial Deputy, and JONATHAN P. FODI, Assistant District Attorney, and respectfully represents the following:

1. The defendant is charged with one count of Criminal Homicide in violation of 18 Pa.C.S. §2501;
2. The Court has set jury selection for February 26, 2019, and trial for March 4, 2019;
3. At trial, the Commonwealth intends to prove that the defendant killed Antwon Rose during a traffic stop that the defendant initiated on June 19, 2018;
4. It is imperative that the evidence admitted by the Court be strictly limited to testimony or other evidence tending to make a fact of consequence more or less probable than it would be without such evidence;
5. Stated another way, it is necessary that the evidence admitted be limited to that evidence which helps the fact finder determine what actions the defendant took or why he took them.

Information that was not known by the defendant at the time he killed Rose has absolutely no relevance and should not be admitted as evidence;

Facts

On June 19, 2018, the defendant, a police officer in the borough of East Pittsburgh, shot and killed Antwon Rose during a traffic stop on Grandview Avenue in the borough of East Pittsburgh. According to the defendant's statement he gave to police, the reason the defendant had stopped the Chevrolet Cruze in which Rose was a passenger was that it matched the description put out over police dispatch radio of a vehicle that had just been involved in a drive-by shooting incident in the nearby neighborhood of North Braddock. When he initiated the traffic stop, the defendant noted that there were multiple occupants in the Chevrolet Cruze. The defendant told investigators that he began the stop by ordering the driver to throw his keys from the vehicle and then ordering the driver to exit the vehicle. The defendant then ordered the driver to lay prone on the ground in front of the defendant. The driver complied with these commands.

A resident of East Pittsburgh, Lashaun Livingston, witnessed the traffic stop and recorded a portion of the events on her cell phone. The recording begins after the driver of the Cruze is already prone on the ground in front of the defendant. The audio and video recording made by Livingston shows, *inter alia*, Rose exit from the front passenger-side door of the vehicle and run into a vacant lot. As Rose entered the lot, the defendant fired three shots at him. All three shots struck Rose, who ultimately succumbed to his wounds. Just as the shooting began, a second person, later identified as Zaijuan Hester, emerged from the back seat of the Cruze and ran in the same direction of and past Rose.

Dr. Abdulrezak Shakir of the Allegheny County Medical Examiner's Office issued an autopsy report that indicated Rose died as a result of gunshot wounds to the head and trunk, and that the manner of death was Homicide.

Detectives from the Allegheny County Police Department immediately took over the investigation. In addition to the evidence already noted above, the investigation revealed that:

- (a) The two firearms in the Chevrolet Cruze were reported as stolen or lost by their respective owners. The 9mm Glock model 26 pistol was reported as lost to the

Monroeville Police Department on June 20, 2018. The .40 caliber Glock model 22 pistol was reported as stolen to the Lower Burrell Police Department in 2016.

- (b) Scientists from the Allegheny County Office of the Medical Examiner compared shell casings from the North Braddock drive-by shooting to the .40 caliber Glock model 22 pistol and identified it as the weapon used in the drive-by shooting.
- (c) Rose had a magazine in his pocket that would fit a Glock model 22 9mm pistol.
- (d) Multiple video cameras captured the drive-by shooting in North Braddock. The recordings showed that the back-seat passenger of the Chevrolet Cruze fired a weapon 13 times. The recordings also showed the Cruze speed away as a man wearing a red shirt returned fire at the Cruze.
- (e) Members of the Allegheny County Medical Examiner's Office examined the firearms found in the Cruze, the vehicle itself, various items of clothing, and other evidence gathered. Testing was performed for, among other things, latent prints, gunshot residue, and DNA.

6. The evidence described in paragraphs 5(a) through 5(e) is evidence that is irrelevant and inadmissible at trial. The defendant could not have known any of that information when he killed Rose. None of that information would make any fact of consequence more or less likely to the fact finder;

7. The Commonwealth asserts that not only is the information not probative, but it could only serve to confuse the fact finder or unfairly impugn the character of the victim. Such material may play to emotions and judgments in the court of public opinion, but it has no place in a court of law within our Commonwealth;

8. The Court can protect the integrity of the case by setting parameters around the evidence to be presented and on argument by counsel;

9. While the defendant may present evidence or make argument that he was aware of the drive-by shooting in North Braddock and that he believed he was engaged in a traffic stop with the suspect vehicle, any reference to the victim's character or alleged prior bad acts must be strictly forbidden;

10. Our courts have made clear that, in cases where the justification defense of self-defense is proffered, evidence of a victim's alleged violent character may be introduced only to (1) corroborate the defendant's alleged knowledge of the victim's character and/or (2) prove the allegedly violent propensities of the victim to show the victim was in fact the initial aggressor. *Commonwealth v. Dillon*, 528 Pa. 417, 598 A.2d 963, 964 (Pa.1991). Prior arrests of the victim may be used to corroborate the defendant's alleged knowledge of the victim's character. Prior arrests may not be used to prove an alleged violent character of the victim in an effort to prove the victim was the initial aggressor. *Commonwealth v. Smith*, 490 Pa. 380, 416 A.2d 986-989 (Pa.1980);

11. In this case, where the defendant's knowledge about the victim is limited to what the defendant saw and heard on

June 19, 2018, the defendant may not attempt to introduce character evidence about the victim;

12. Further, where, as here, the victim had no prior arrests or convictions, the issue raised by the Court in *Smith* is moot.

WHEREFORE, based upon the foregoing, the Commonwealth respectfully requests that this Honorable Court convene a hearing on the within motion, and thereafter issue an Order prohibiting counsel for the defendant, the defendant and any witnesses called on behalf of the defendant from bringing to the attention of the jury the information described in paragraphs 5(a) through 5(e) of the within motion, as well as any other information not known by the defendant at the time he killed Antwon Rose, during the pretrial or trial stages of the above-captioned case.

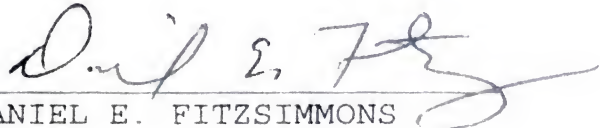
In the alternative, based upon the foregoing, the Commonwealth respectfully requests that this Honorable Court convene a hearing on the within motion, and thereafter issue an Order prohibiting counsel for the defendant, the defendant and any witnesses called on behalf of the defendant from bringing to the attention of the jury the information described in paragraphs 5(a) through 5(e) of the within motion, as well as any other information not known by the defendant at the time he

killed Antwon Rose, until such time as the Court has rendered a decision as to the admissibility of that information.

Respectfully submitted,

STEPHEN A. ZAPPALA, JR.,
DISTRICT ATTORNEY

By:


DANIEL E. FITZSIMMONS
CHIEF TRIAL DEPUTY